

NTSB Order No. EM-183

Adopted by the NATIONAL TRANSPORTATION SAFETY BOARD  
at its office in Washington, D.C.  
on the 24th day of November, 1997

RONALD P. WILLIAMS,  
Appellant.

Docket ME-163

Appellant, by counsel, seeks review of a decision of the Commandant (Appeal No. 2575, dated June 25, 1996) affirming a decision and order entered by Coast Guard Administrative Law Judge Archie R. Boggs on November 7, 1994, following an evidentiary hearing that concluded on August 12, 1994.<sup>1</sup> The law judge sustained a charge of use of dangerous drugs and ordered

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the revocation of the appellant's Merchant Mariner's License (No. 691817). As we find no valid basis in appellant's assignments of error for overturning the Commandant's affirmance of the law judge's decision, appellant's appeal, to which the Coast Guard filed a reply in opposition, will be denied.

The appellant challenges the Commandant's decision on the ground that the weight of the evidence adduced in this proceeding does not support a conclusion that a drug test performed on a urine sample he gave on May 12, 1994, in connection with a pre-employment drug screening, proved that he had used a dangerous drug; namely, cocaine. The challenge, in other words, at least in the appeal before us, is not directed at any identified flaw in the collection procedure or deficiency in the manner in which the urinalysis was accomplished, and it does not seek to discredit the reliability of urinalysis in drug testing.<sup>2</sup> Rather, appellant's position is that the evidence he produced in support of his denial of cocaine use outweighed the Coast Guard's showing that he had used the drug. We do not agree.

Appellant sought to rebut the Coast Guard's unimpeached evidence of drug use, that is, the positive test results for the May 12, 1994 specimen, by introducing (1) the results of two subsequent urinalyses (May 27 and July 19, 1994) that were negative for cocaine, (2) the assessments of two organizations

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<sup>2</sup>Appellant's specimen produced a cocaine positive result in an initial screen employing an enzyme immunoassay methodology. That finding was confirmed through gas chromatography/mass spectrometry.

(The Salvation Army and a hospital), in letters dated July 15, 1994, that, based on psychological testing and interviews, appellant was not dependent on drugs or chemicals, and (3) the negative-for-cocaine result of a radioimmunoassay analysis performed on a sample of appellant's hair on July 28 or 29, 1994.

Explanatory documentation included with the latter test indicated that radioimmunoassay analysis of hair ("RIAH") of the length appellant provided could permit a screen for drugs used in the previous 90 days.

We agree with the Coast Guard that neither the late May and mid-July negative test results submitted by the appellant nor the evaluations concerning his possible addiction offset its evidence with regard to the single charge against the appellant. The submissions of both parties recognize that cocaine would be essentially undetectable through urinalysis more than 72 hours after ingestion, and, apart from the fact that appellant was not charged with drug dependency of any kind, whether or not he was dependent on cocaine two months after the positive test result for that drug does not shed any light on whether he had used the drug on or about May 12, 1994. Since the only evidence appellant put forth that could be said to be relevant to the question of his alleged drug use on or about May 12 was the RIAH test,<sup>3</sup> his argument that the Coast Guard did not sustain its burden of proof must fail unless the RIAH test result was shown to be at least as

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<sup>3</sup>Appellant represented himself at the hearing and did not testify in his own defense. He is represented by counsel on this appeal to the Board.

reliable as the urinalysis testing sponsored by the Coast Guard.

No such showing was made.

There was, on the record compiled by the law judge, no dispute between the parties over the reliability of urinalysis as a drug screen for cocaine. On the other hand, the documents the parties introduced into evidence on using hair analysis for drug detection revealed, at best, divergent views as to the current validity and reliability of this evolving technology, both in its own right and as compared to urinalysis.<sup>4</sup> With the record in this posture, the Coast Guard's decision to give more weight to a drug test of widely-accepted reliability, and which was conducted according to strict chain-of-custody and other regulatory requirements designed to insure accuracy in drug screening, over a relatively unproven test of, as yet, debated merit cannot be deemed unreasonable. More to the point, since this balancing of the weight of the parties' evidence supports a conclusion that it is more likely than not that appellant used a dangerous drug as alleged, appellant's contention that the charge against him was not proved by a preponderance of the evidence must be rejected.

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<sup>4</sup>In his decision, the Commandant took issue with the law judge's treatment of the RIAH evidence submitted by the appellant, in part because no clear finding concerning that evidence was made and in part because the law judge looked outside the record for information relevant to the current status of RIAH testing. Appellant contends that the Commandant, in these circumstances, should have remanded the case to the law judge. We see no error in the Commandant's determination to review the wholly documentary evidence on the issue without any additional views of the parties on how to interpret their submitted exhibits.

**ACCORDINGLY, IT IS ORDERED THAT:**

1. The appellant's appeal is denied, and
2. The Commandant's decision affirming the decision and order of the law judge is affirmed.

HALL, Chairman, FRANCIS, Vice Chairman, HAMMERSCHMIDT, GOGLIA, and BLACK, Members of the Board, concurred in the above opinion and order.